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5 Attorneys for Defendants  
6 See Signature Page  
7  
8

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION

11 HARRIS L. WINNS,

12 Plaintiff,

13 v.

14 BLAKELY SOKOLOFF TAYLOR &  
15 ZAFMAN, LLP, ANTHONY INTIL, CANDY  
16 MIELKE, JIM SALTER, MICHAEL MALLIE,  
17 JOHN P WARD, ED TAYLOR, DAN DEVOS,  
18 DIANE ROBSON, LESTER VINCENT,  
19 STEVE ZELMAN, DAVE MONTOYA,  
20 KAREN WILSON, TAREK FAHMI, LAURA  
21 E. INNES, RONALD F. GARRITY, CHARLES  
22 WALL

Defendants.

CASE NO.: C08 02622 JW

**DEFENDANTS' NOTICE OF MOTION  
AND MOTION FOR RULE 12(b)(6)  
MOTION TO DISMISS PLAINTIFF'S  
COMPLAINT**

DATE: September 15, 2008  
TIME: 9:00 a.m.  
DEPT: Courtroom 8, 4th Floor  
JUDGE: James Ware

TO PLAINTIFF HARRIS L. WINNS:

PLEASE TAKE NOTICE that on September 15, 2008 at 9:00 a.m. or as soon thereafter as  
the matter may be heard in Department 8 of the above entitled court located at 2112 Robert F.  
Peckham, Federal Building, United States Courthouse, 280 South First Street, San Jose, California,  
95113-3002, Telephone: (408) 535-5364, Defendants Blakely Sokoloff Taylor & Zafman, LLP,  
Anthony Intil, Candy Mielke, Michael Mallie, John P. Ward, Ed Taylor, Dan Devos, Diane  
Robson, Lester Vincent, Jim Salter, Dave Montoya, Tarek Fahmi, Steve Zelman, and Karen Wilson

1 ("Defendants") will and hereby do move to dismiss Plaintiff Harris L. Winns' ("Plaintiff")  
 2 complaint on file herein in its entirety pursuant to Federal Rule of Civil Procedure 12(b)(6).  
 3

4 This motion to dismiss is made on the grounds that Plaintiff has failed to state a cause of  
 5 action upon which relief may be granted. Plaintiff filed an action in California Superior Court for  
 6 the County of Santa Clara in August 2007, alleging causes of action arising out of the same  
 7 transaction or occurrence as asserted in his current Complaint and seeking to vindicate the same  
 8 primary rights implicated in the current Complaint. Plaintiff's state court action was litigated to a  
 9 final judgment on the merits, and therefore Plaintiff's current Complaint is barred by the doctrine of  
 10 res judicata. In addition, each and every cause of action Plaintiff attempts to assert in the current  
 11 Complaint is barred by the applicable statute of limitations. Finally, Plaintiff's current Complaint is  
 12 impermissibly vague, ambiguous, overbroad and unintelligible, and fails to state facts constituting  
 13 any claim upon which relief may be granted.

14 This motion to dismiss is based upon this notice, the memorandum of points and authorities,  
 15 the Declaration of Nancy L. McCoy and Defendants' Request for Judicial Notice and exhibits  
 16 thereto, all served and filed concurrently herewith, as well as on all pleadings, records, and  
 17 documents on file with the court in this action, and on all such oral and documentary evidence and  
 18 arguments of counsel al may be presented at the hearing of this motion.

19 Dated: Friday, August 15, 2008

STRAZULO FITZGERALD LLP

22 By \_\_\_\_\_

23 Nancy L. McCoy  
 24 Cortney L. McDevitt  
 25 Attorneys for Blakely Sokoloff Taylor & Zafman,  
 26 LLP, Anthony Intil, Candy Mielke, Michael  
 Mallie, John P. Ward, Ed Taylor, Dan Devos,  
 Diane Robson, Lester Vincent, Jim Salter, Dave  
 Montoya, Tarek Fahmi, Steve Zelman, and Karen  
 Wilson